Filed 2/10/14 In re S.F. CA1/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re S.F., a Person Coming Under the Juvenile Court Law.	
SOLANO COUNTY HEALTH AND SOCIAL SERVICES DEPARTMENT, Plaintiff and Respondent, v. D.F., Defendant and Appellant.	A138957 (Solano County Super. Ct. No. J41507)
D.F. Petitioner, v. THE SUPERIOR COURT OF SOLANO COUNTY, Respondent; SOLANO COUNTY HEALTH AND SOCIAL SERVICES DEPARTMENT et al., Real Parties in Interest.	A140063 (Solano County Super. Ct. No. J41507)

In this juvenile dependency proceeding, D.F. (father) appeals from orders terminating reunification services at the six-month review hearing. He also challenges an order setting a hearing pursuant to section 366.26 of the Welfare and Institutions Code.[1]

Father suffers from schizophrenia and, at least from a layperson's perspective, appears to be profoundly mentally disabled. On appeal, he argues that the juvenile court erred in terminating reunification services because respondent Solano County Health and Social Services Department (Department) did not provide him with reasonable services. We reluctantly agree with father that the record does not contain substantial evidence to support a finding that he received reasonable services to address his mental health issues.

We are compelled to vacate the orders terminating reunification services and setting a section 366.26 hearing. On remand, the Department may wish to consider whether it is appropriate to seek a modification of the dispositional orders under section 388 in light of father's apparent inability to utilize reunification services as a result of a mental disability. (See § 361.5, subd. (b)(2).)

FACTUAL AND PROCEDURAL BACKGROUND[2]

The minor, S.F., was born in November 2011. He first came to the attention of the social services agency in Sacramento County on the day following his birth, when a referral expressed concern that N.P. (mother) and father had untreated mental health issues that placed S.F. in danger of being neglected. The reporting party stated that father had been diagnosed with schizophrenia and had auditory hallucinations. The referral was found to be inconclusive, although the social services agency and the family developed a safety plan to address concerns that had been raised. The social worker attempted to engage father in the development of the safety plan, but he did not appear to have the

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] Because this consolidated proceeding concerns father, and because the child's mother chose not to file an appellate challenge to the juvenile court's orders, our recitation of the facts focuses on father.

ability to participate. As part of the safety plan, father was not to be left alone with the child.

About two months after the first referral, on January 19, 2012, the Sacramento County social services agency received a referral that mother and father were unable to care for S.F. due to unsafe housing and their untreated mental health problems. Again, the referral was found to be inconclusive, although another safety plan was developed at a team meeting with the family. Part of the updated safety plan involved having the father remain away from the home until the parents stabilized their mental health.

S.F. first came to the attention of the Department in Solano County on June 15, 2012, when he was a little over six months old. The Department received a referral that S.F. was at risk for emotional abuse as a result of a domestic violence incident between father and mother. The next day, the Department received a report expressing concerns of general neglect regarding S.F., including that mother was homeless, did not have proper food or supplies for S.F., and was threatening suicide. In the course of an investigation into the matter, a social worker learned that mother had a history of mental illness and was not on any medication to treat her illness. Mother told the social worker she was overwhelmed by the fact father had abandoned her and S.F. on June 8, 2012. The Department took S.F. into protective custody on June 18, 2012.

The social worker contacted the paternal grandmother regarding her son's (i.e., father's) whereabouts. The paternal grandmother reported that she did not know where he was but had received a call from him a few days earlier asking for financial assistance. She also stated she was concerned about father because he had a long history of mental health instability, had been diagnosed with bipolar disorder and schizophrenia at the age of 17, and had been hospitalized numerous times since 2007.

The Department filed a juvenile dependency petition on behalf of S.F. on June 20, 2012. According to the detention report filed on the same date, the Department had not been able to locate father. Based upon the parents' history of domestic violence, unresolved mental health issues, and their inability to provide S.F. with food and shelter, the Department recommended continued detention of the child. At a hearing on June 21,

2012, the juvenile court ordered S.F. detained. Neither parent was present at the detention hearing. Pending further proceedings, the court directed father to receive alcohol and drug testing, substance abuse treatment, parenting education, a mental health assessment, and domestic violence education.

On June 26, 2012, the paternal grandmother reported to the Department that father was in a mental health facility in Sacramento. The social worker attempted to contact the facility in Sacramento on four occasions between June 26, 2012, and July 3, 2012, to provide father with legal notice of the dependency proceeding. An administrator at the facility informed the social worker that she could arrange to meet with father during visiting hours. At a further hearing conducted on July 5, 2012, the juvenile court ordered the social worker to interview father at the mental health facility.

At the time the social worker prepared the jurisdiction report, she had no further information concerning father's whereabouts or his mental health status. She filed a declaration of due diligence reflecting her efforts to locate father. The social worker reported her conversations with the paternal grandmother and with the paternal great aunt (hereafter referred to as "aunt") concerning father's mental health status. The aunt described herself as the "sole caretaker" of both father and S.F. She reported that father had been missing for days, had been calling the family, and had been wandering around lost before being admitted to a mental health facility. Although she believed that father loves S.F., she did not believe he knew how to parent S.F. on his own. The aunt informed the social worker that she recently moved into a two-bedroom apartment in Sacramento County for the purpose of being able to provide housing to father and S.F.

The social worker filed another declaration of due diligence on August 6, 2012, because she was still unsuccessful in her attempts to contact father. Ultimately, the social worker was able to interview father on August 7, 2012. On that same date, the court held a contested jurisdiction hearing. At the hearing, the court appointed a guardian ad litem for father and continued his jurisdiction hearing to September 13, 2012. As to mother, the court sustained jurisdictional allegations based on her mental health issues, domestic violence between her and father, and her failure to have proper food and shelter for S.F.

The Department filed an addendum to the jurisdiction report on September 11, 2012. In the addendum, the social worker reported on her face-to-face meeting with father on August 7, 2012. She stated that although father participated in the interview, he was incoherent and unable to answer her questions. When she attempted to provide father with a copy of the juvenile dependency petition, he returned it to the social worker, stating that "he did not want the liability of having his own copy." The social worker asked father if he had recently been in the hospital, to which he replied that he had not, but that he had been in a " 'situation.' " He also stated that "he ha[d] been in these 'situations' before and was likely to be in a similar 'situation' again." When the social worker asked father about a scar under his left eye, father responded by talking about a bump above his right eye. He told the social worker that certain areas on his head were " 'rituals,' " and that the "bumpy area contained 'tubes' [that] would open to reveal 'coins.' " When father was asked whether he wanted to have visits with his child, he responded that he would like to wait " 'a couple of years, until he's older.' " After the social worker discussed the opportunity for regular visits, father was unable to respond with a coherent thought or question but instead talked about needing to keep S.F. "away from 'magnetic balls' which might have 'toxins' or 'antioxidants' or 'poisons' on them."

Father was brought by his aunt to attend one supervised visit with S.F. on August 20, 2012. Father interacted briefly and appropriately with S.F. but was asleep for most of the visit.

The Department concluded in its addendum report that father was unable to care for S.F. due to his mental health status. The social worker wrote that "[i]t is critical that the Department be able to access [father's] mental health records and interact with providers to determine appropriate services, given his needs." Nevertheless, the Department recommended offering reunification services to father as well as mother. At the time the Department made this recommendation, there is no indication in the record that it had access to father's mental health records, interviewed any mental health professional who treated father, or had available to it any mental health evaluation of father. Instead, the source of the Department's knowledge about father's mental health

condition appears to have come from his mother and aunt as well as from the social worker's attempt to interview him.

At a combined jurisdiction and disposition hearing conducted on September 13, 2012, father submitted to the jurisdictional allegations, with an amendment striking part of an allegation addressing father's mental health condition. The juvenile court found by a preponderance of the evidence that father has a significant history of mental health issues, was diagnosed with schizophrenia and bipolar disorder, and was unable to provide safe and adequate care for S.F. as a result of his mental health issues. The court also found by a preponderance of the evidence that the parents had failed to provide food and adequate shelter for the child. The court further found father to be S.F's presumed father. The court's dispositional order contains a finding that provision of reunification services to father would benefit S.F. The juvenile court found there was clear and convincing evidence to remove S.F. from the parents' home and ordered reunification services for father and mother.

Father's case plan required him to comply with medical or psychological treatment and participate in counseling services that may be available to address factors impacting his ability to provide care for S.F. He was also required to participate in the development of a safety plan. Father was expected to "follow treatment recommendations, including compliance with psychotropic medication as prescribed by a doctor, and compliance with follow up appointments to evaluate and monitor the effectiveness of medications." His case plan also required him to complete a parenting skills program approved by his social worker. The court ordered two supervised visits weekly for each parent.

In its status review report for the six-month review filed on February 28, 2013, the Department recommended that reunification services to both parents be terminated and that the court set a section 366.26 hearing. The report was not prepared by the social worker who had initially handled the matter at the time of the jurisdiction and disposition hearing, but was instead prepared by a social worker who apparently took over the case. According to the report, father continued to reside in Sacramento with his aunt. Father

had not been employed during the reporting period but received Supplemental Security Income. Father suggested to the social worker during the reporting period that he had completed a " 'covert' operation/mission and that he [was] writing a book regarding his experience as a 'pole dancer' and 'porn star.' " The social worker concluded these events did not actually occur but were instead symptoms of father's mental illness.

During the reporting period, father had attended two parenting classes with his aunt. Although he received a certificate of completion, he was asked to leave halfway through the first class and was asked not to return after the second class. He was requested to leave because of his behavior, including laughing at inappropriate times and making remarks unrelated to the class. Father was observed to have taken extensive notes during the parenting class. However, when the social worker reviewed the notes, she found them to be nonsensical. After father stopped attending parenting classes, he received parenting instruction during supervised visits provided by the Department.

Father's aunt joined in his visits with S.F. After father visited S.F. on two occasions in September 2012, the service provider notified the Department that it would not be able to provide further supervision due to father's inappropriate behavior and comments directed towards S.F. during the visits. The service provider reported to the social worker that father made inappropriate comments during the visits, such as, "I'll slap the fuck out of you," and "Nigga I'll shoot," among others. The Department took over supervision of father's visitation, which resumed in October 2012. During visits supervised by the Department, father continued to make comments that the visitation supervisor assessed as inappropriate. Father's bizarre comments included foul language, referred to sexual behavior, or were simply nonsensical strings of words. Although there were times father was able to interact appropriately with S.F., he often appeared distracted and there were occasions when the interactions between father and S.F. had to be initiated by the visitation supervisor physically placing S.F. in father's lap. The visitation supervisor also observed that father would routinely leave for ten to fifteen minutes during his hour-long visits with S.F. On January 30, 2013, father declined to participate in his visit at all.

During the period leading up to the six-month review, father had received mental health treatment services from Human Resources Consultants (HRC). He participated in monthly meetings with a psychiatrist and received injections of psychotropic medication every two weeks. On November 5, 2012, the social worker left a message with HRC in an attempt to discuss father's service plan. The call was not returned. On November 16, 2012, the social worker was able to reach a service coordinator at HRC, who reported that father was " 'completely delusional' " and " 'incapable of communication on any level.' " The service coordinator reported concerns that father's aunt, with whom father lived, was giving father unauthorized medication. The service coordinator informed the social worker that father "may need a higher level of care [than] their agency is designed to provide and will be discussing having the father served by an agency 'T Core' which is next door to their agency." As reflected in the status report, the social worker inquired if there was anything she could do to facilitate the process, but the service coordinator told her there was nothing she could do.

During subsequent meetings with father and his aunt in December 2012 and January 2013, the social worker was informed by the aunt that father continued to receive treatment from HRC and had been consistent in receiving his twice-weekly injections. As of mid-February 2013, father's aunt informed the social worker that, to her knowledge, father had not begun receiving treatment at T Core.

The social worker attempted to call HRC on February 15, 2013, and again on February 25, 2013, to follow up on father's mental health treatment plan. She was not able to leave a message. She also faxed a written request to HRC seeking information concerning father's course of treatment, although she had not received a response by the time she prepared the status report for the six-month review.

The Department assessed that there was a high level of risk to placing S.F. with either mother or father because both parents were only occasionally able to demonstrate behaviors consistent with objectives in their case plans. In addition, the social worker noted that father had not demonstrated that he even possessed the capacity or ability to complete the objectives in his case plan.

At a contested six-month review hearing in April 2013, the social worker testified that father had been assessed numerous times in the past to be a danger to himself and others as a result of his mental health issues. She testified that father continued to display symptoms of mental illness, including engaging in irrelevant conversation, putting words together that do not make sense, using inappropriate language in front of S.F., and having difficulty interacting with S.F. for longer than 30 minutes at a time. The social worker explained that during her periodic contacts with father, she was unable to discuss case plan issues with him because there were only moments during which he was capable of answering a question. The review hearing was continued to late April 2013.

At the continued review hearing, the Department resolved issues as to mother through a stipulation in which the Department agreed to provide reunification services to her until the time of the twelve-month review. The contested review hearing resumed with father's counsel cross-examining the social worker. According to the social worker, father was currently complying with the requirement for mental health treatment by seeing a psychiatrist and taking medication. However, he had not been assessed to determine if the medications were interfering with his ability to participate appropriately in parenting class. In addition, the social worker had not spoken to the treating psychiatrist about concerns regarding father's medication.

The social worker testified that she did not make any specific referrals to allow father to participate in any additional mental health services other than those offered at HRC. Although she was informed by HRC that father possibly needed a higher level of care and that a program referred to as "T Core" might be more appropriate for father, the social worker did not follow up, explaining that she was told there was nothing she could do to facilitate the placement. The social worker explained that she had recently attempted unsuccessfully to contact HRC about the T Core program.

At the close of the hearing, father's counsel objected on the ground that reasonable services had not been provided to father. Counsel argued that, despite father's ongoing mental health issues, "there had been no recommendation or any referrals for a psychological or psychiatric evaluation; no follow up with respect to my client's

medication regime; no follow up with respect to parenting after October 24th, when it became evident that perhaps my client's mental health issues were affecting his participation in that class. Again, no additional referrals were made to my client to assist him in achieving the goals of reunification."

The juvenile court disagreed with counsel's assessment. The court stated, "I don't know what more reasonable services could be offered. I mean, he has a psychiatrist. The psychiatrist is treating him. I don't know how you go beyond that, quite frankly." The court continued: "[I]t's obvious to the Court or anybody who sees [father] that he is very mentally ill. . . . The problem is he has a mental health problem that goes beyond, apparently, treatment at this point. At least they haven't been able to effectively treat him. It may not be his fault. I don't know. But the problem is that I don't know that any other followup could have helped."

The court found by clear and convincing evidence that reasonable services were offered to father, that returning the child to the physical custody of father would create a substantial risk of detriment to the child's safety, and that father failed to participate regularly and make substantial progress in his case plan. The court also found that further reunification services would be a detriment to the minor and that there was no substantial probability the child would be returned to father in six months. The court terminated further reunification services for father. Father was allowed to continue supervised visits with S.F. one time a month for a period of one hour, with the Department given discretion to expand visitation if the situation improved.

Father filed a timely notice of appeal from the orders at the six-month review hearing in case number A138957.

A contested twelve-month review hearing was conducted on October 16, 2013. During the hearing, father's counsel questioned the social worker concerning father's interaction with S.F. during a visit. Based on evidence that father had an appropriate visit with S.F. in September 2013, counsel requested that the Department increase father's visitation with S.F. to two times a month. Counsel also objected to the prior court order terminating reunification services for father.

At the conclusion of the hearing, the court terminated mother's reunification services and set the matter for a section 366.26 hearing to be held on February 13, 2014. The court gave the Department discretion to increase or decrease visitation with respect to both mother and father, but did not change the visitation orders as to father as requested by his counsel.

Father filed a timely notice of intent to file a writ petition in case number A140063 challenging the order setting a section 366.26 hearing. Mother did not challenge the order.

At the time briefing was complete in the writ proceeding in A140063, briefing in the appeal in A138957 had not yet concluded. On this court's own motion, we consolidated A138957 and A140063 for purposes of decision. We observed: "The petition raises the same issues as the appeal. Further, it is apparent that the appeal in A138957—which challenges an order terminating father's reunification services—must be resolved before the juvenile court may consider terminating parental rights pursuant to section 366.26 of the Welfare and Institutions Code at the hearing currently scheduled for February 13, 2014."

DISCUSSION

On appeal in A138957, father contends he did not receive reasonable reunification services to address his mental health issues. He therefore argues that the order terminating reunification services must be reversed. He raises the same argument in the writ proceeding in A140063, and he also argues that the juvenile court erred in denying his request to expand his visitation to twice a month.

For reasons we shall explain, we agree with father that he did not receive reasonable reunification services. We reach this conclusion reluctantly because we tend to agree with the juvenile court's conclusion that father suffers from a severe mental illness. We also tend to agree that it would not be in S.F.'s best interest to extend the reunification period in light of father's mental health issues. However, we cannot overlook the failure to maintain adequate contact with father's mental health service provider in order to ensure that he received services tailored to his unique issues. Despite

evidence that father required further assessment and more intensive treatment, the social worker did little other than leave it to the service provider to follow up. Indeed, the record in this case is remarkable for the lack of psychiatric evidence concerning father's condition. Although it is plain that father suffers from mental illness, the record is devoid of competent evidence from psychiatric or psychological professionals concerning the nature of, and prognosis for, father's illness. Under these circumstances, we simply cannot conclude the Department provided reasonable services to father.

1. *Controlling Legal Principles and Standard of Review*

Whenever a child is removed from a parent's custody, the juvenile court must order the social worker to provide reunification services to the child's parents, unless the court finds by clear and convincing evidence that specified circumstances justify denial of services. (§ 361.5, subds. (a)(1) & (b).) Where, as here, the child was under three years of age on the date of initial removal, court-ordered services shall be provided for a period of six months from the dispositional hearing but no longer than 12 months from the date the child entered foster care. (§ 361.5, subd. (a)(1)(B).) In such a case, the court may terminate reunification services at the six-month review hearing and schedule a section 366.26 hearing if the court finds by clear and convincing evidence the parent failed to participate regularly and make substantive progress in the court-ordered plan. (§ 366.21, subd. (e).) Regardless of the parent's compliance with the case plan, however, if the court finds it is substantially probable the child will be returned home within six months *or* that the services offered to the parent were unreasonable, the court must schedule a 12-month review hearing and extend services for another six months. (*Ibid.*)

Reunification services are among the "[s]ignificant safeguards" that have been built into the current dependency scheme in California to provide the parent due process and fundamental fairness while also accommodating the child's right to stability and permanency. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307–308.) The Department is required to " 'make a good faith effort to develop and implement a family reunification plan . . . [with] the objective of providing such services or counseling "as will lead to the

resumption of a normal family relationship." ' " (*In re Jasmon O.* (1994) 8 Cal.4th 398, 424.)

" 'Reasonable efforts' or 'reasonable services' means those efforts made or services offered or provided by the county welfare agency . . . to prevent or eliminate the need for removing the child, or to resolve the issues that led to the child's removal in order for the child to be returned home, or to finalize the permanent placement of the child." (Cal. Rules of Court, rule 5.502(33).) Services will be found reasonable if the Department has "identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult (such as . . . offering more intensive rehabilitation services where others have failed)." (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) "The effort must be made, in spite of difficulties in doing so or the prospects of success." (*Christopher D. v. Superior Court* (2012) 210 Cal.App.4th 60, 69.) "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

The adequacy of reunification plans and the reasonableness of the Department's efforts are judged according to the circumstances of each case. (*Christopher D. v. Superior Court, supra*, 210 Cal.App.4th at p. 69.) The juvenile dependency law requires the courts and social services agencies to consider a parent's limitations and disabilities in providing reasonable services. (See *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1790; *In re Victoria M.* (1989) 207 Cal.App.3d 1317, 1320.)

In *In re Jamie M.* (1982) 134 Cal.App.3d 530, 540, the court rejected the notion that a diagnosis of schizophrenia precluded a mother's reunification with her children. According to the court, such a diagnosis "should be the court's starting point, not its conclusion. Rather than mandating a specific disposition because the mother is schizophrenic, the diagnosis should lead to an in-depth examination of her psychiatric history, her present condition, her previous response to drug therapy, and the potential for

future therapy with a focus on what affect [sic] her behavior has had, and will have, on her children." (*Ibid.*) In *In re Elizabeth R., supra,* 35 Cal.App.4th at p. 1790, the court wrote, "[i]f mental illness is the starting point, then the reunification plan, including the social services to be provided must accommodate the family's unique hardship." More recently, in *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1425–1426, the court reaffirmed that "[t]he juvenile court and child welfare agency must accommodate the special needs of disabled and incarcerated parents."

On appeal, a juvenile court's finding that reasonable reunification services have been offered or provided is reviewed for substantial evidence. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.) "We review the evidence most favorably to the prevailing party and indulge in all legitimate and reasonable inferences to uphold the court's ruling. [Citation.] ' "Substantial evidence is evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value." ' " (*Tracy J. v. Superior Court, supra,* 202 Cal.App.4th at p. 1424.)

2. *Reasonableness of Reunification Services*

As the Department acknowledges, Father's preeminent problem was the severity of his mental health issues. Father participated in mental health treatment through HRC. That treatment consisted of meeting monthly with a psychiatrist and receiving medication through an injection once every two weeks. According to the juvenile court, it was unclear what more could be offered. While a parent's treatment by a mental health professional may support a finding the parent was offered reasonable services, the mere fact a parent participated in some form of treatment does not compel a conclusion that the services were reasonable under the circumstances. Where, as here, a social services agency learns that existing services are inadequate to address a parent's unique needs, the agency has an obligation to take reasonable measures to address the inadequacy. That was not done in this case.

Based upon the record provided to this court, the social worker's sole contact at HRC appears to have been a service coordinator, who stated his belief that father was " 'completely delusional' " and may have required more intensive care than HRC was

designed to provide. However, instead of requesting a psychological evaluation or a referral to "T Core" or another appropriate service provider, the social worker left it to the service coordinator to follow up. She claims she was told there was nothing she could do to facilitate the process. The Department argues that the social worker acted reasonably in leaving the referral to HRC and in following up later with father's aunt and with HRC. Under the circumstances presented here, we disagree.

It was clear relatively soon after reunification services were being offered to father that his mental health issues were preventing him from utilizing services and having appropriate visits with S.F. Despite being told that father had severe mental issues and might require a more intensive level of care than HRC could provide, no effort was made by the social worker to have father evaluated or referred to another service provider. The social worker only followed up several months later when she learned from father's aunt that he apparently had not begun treatment with T Core. It was only then that she attempted without success to contact HRC and learn more about father's treatment plan. By the time of the six-month review, the social worker had no information concerning whether father had been receiving more intensive treatment or even whether he had been evaluated for a different program, such as T Core, that might have been more appropriate to address his mental health needs.

While it may have been reasonable to expect HRC to follow up with a referral, particularly when HRC offered to pursue the matter, it was not reasonable to wait until the end of the six-month reunification period to learn what, if anything, HRC had actually done. If HRC was incapable of providing adequate services to father, it was the Department's responsibility to follow up with referrals for more appropriate services.[3] It is telling that the social worker received status updates on father's participation in mental

[3]On appeal, the Department cites web sites for HRC and T Core purportedly to demonstrate HRC was in the best position to refer father to T Core because T Core is a collaboration with HRC and another agency. We disregard these references, which are not part of the record before the juvenile court. (See *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3 [reviewing courts consider only matters that were part of the record before the trial court unless exceptional circumstances exist].)

health treatment primarily from father's relatives, including his aunt, instead of from the service provider, HRC. If the concern was that HRC was not responsive to the Department's inquiries, the social worker should have had even more cause to pursue the matter and ensure that father received appropriate services.

Although father was being seen by a psychiatrist, there is no indication the social worker ever spoke with the psychiatrist or received any evaluation from a mental health professional concerning either the severity of father's illness or the likelihood that it could be treated with psychotropic medication. Further, there is no indication in the record that the social worker ever followed up with an evaluation to assess the adequacy of father's medication regimen or the need for a change in medication. Indeed, as mentioned above, the record surprisingly lacks any evaluations of father by a mental health professional, despite the fact that mental illness was the key issue preventing him from reunifying with his child.[4]

This case bears some similarities to *In re K.C.* (2012) 212 Cal.App.4th 323, 325 in which the court concluded that reasonable services had not been provided to a father who had psychological conditions interfering with his ability to reunify with his children. There, despite receiving an evaluation recommending a further examination to determine whether the father's condition might be alleviated through medication, the social service agency's only attempt to secure an evaluation was to send the father to a public mental health clinic, which declined to undertake the recommended evaluation. The social services agency made no attempt to secure the evaluation elsewhere. (*Id*. at p. 329.) As relevant here, the social services agency purported to justify its failure to follow up

[4]Moreover, it is unclear from the record whether father was already participating in treatment at HRC before the dependency proceedings were instituted. Father's counsel asked the social worker to confirm that the mental health services were in place prior to the dependency, but she could not answer the question or even say how it came to be that father was being treated at HRC. While the social worker's responses do not necessarily prove, as father claims, that the Department did "next to nothing" to assist his mental health treatment, they at least support an inference that the Department relied on services already being provided to father and failed to respond when those services proved inadequate.

because the social worker believed, based upon conversations with a clinic doctor, that the clinic would refer the father to other places if it could not provide treatment. (*Id.* at p. 331.) The court rejected this attempt to justify the agency's failure to provide referrals to other service providers. The court also criticized the social service agency for delegating to the father himself the burden of finding and obtaining services. (*Id.* at p. 330.)

Similarly, the Department in this case delegated to HRC the burden of finding and providing more appropriate services. While the social worker may have acted reasonably at the outset in relying on HRC to pursue this course of action, it was not reasonable to follow up only months later, near the end of the six-month reunification period, to attempt to learn what type of treatment father was receiving.

Another case with similarities to this one is *Tracy J. v. Superior Court, supra,* 202 Cal.App.4th 1415. In that case, the appellate court concluded that the social services agency failed to provide reasonable reunification services to a developmentally disabled parent. (*Id.* at p. 1419.) An evaluating psychologist concluded the parent would require ongoing assessment, and the social worker recommended an evaluation by a medical professional. (*Id.* at p. 1428.) No such evaluation occurred. The court questioned whether the parent's condition was treatable and why the social services agency had failed to locate alternate services. (*Ibid.*) Likewise, here, we are left to question whether father's condition and his ability to take advantage of reunification services would have improved with more intensive mental health treatment or a different medication regimen.

The Department relies on *In re Misako, supra,* 2 Cal.App.4th 538, for the proposition that reunification services need not be perfect. Plainly, services do not have to be perfect to be considered reasonable. Nevertheless, in this case, the mental health services were lacking to such a degree that they cannot be considered reasonable. In *Misako,* the parent complained about the failure to obtain an earlier psychological evaluation that would have permitted an earlier referral to services. (*Id.* at p. 545.) In rejecting the parent's complaint about the adequacy of services offered, the court noted that the parent's mental impairment was not evident and that the parent had actively resisted participating in services. (*Id.* at p. 545.) The court also rejected the parent's

contention that the social services agency should have arranged for more frequent visits with the social worker and counselor, observing that "[i]n almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect." (*Id.* at p. 547.) In this case, by contrast, father's mental illness was apparent to everyone involved, the social worker was sufficiently informed of the inadequacy of the services being offered to father, and father did not resist any mental health services offered to him. Further, the concern here was not about the frequency of visits but about the fundamental inadequacy of the mental health services being offered to father.

The Department also argues that father failed to participate and make substantive progress in his court-ordered treatment programs. Although we have no disagreement with the contention, it has no bearing upon the determination of whether reasonable services were provided or whether the reunification period must be extended for a period of six months. As explained in *M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 175–176, a court's finding that a parent failed to participate regularly and make substantive progress in a treatment plan is the first determination to be made at a six-month review hearing under section 366.21, subdivision (e). "Notwithstanding any findings made pursuant to the first determination, the court shall not set a .26 hearing if it finds either: (1) 'there is a substantial probability that the child . . . may be returned to his or her parent . . . within six months'; or (2) 'reasonable services have not been provided' to the parent. [Citation.] In other words, the court must continue the case to the 12-month review if it makes either of these findings. . . . The parent is also entitled to continued reunification services (with any necessary modifications) if the court makes either of these findings in favor of the parent." (*M.V. v. Superior Court, supra*, at p. 176.) Consequently, father was not required to show that he made substantive progress in court-ordered treatment programs to justify receiving further services. A finding that he was not offered reasonable services entitles him to receive continued reunification services.

In this case, it appears father was already participating in mental health services when the dependency proceedings were initiated. There is no indication the Department secured a professional evaluation of father's condition or sought to determine whether his mental health issues prevented him from benefiting from reunification services. Instead, based on little other than second-hand information about father's mental health and the social worker's interview with him, the Department recommended offering him services. Having chosen to offer him services, the Department had an obligation to provide reasonable services tailored to father's needs. The inadequacy of the services here is demonstrated by the failure to follow up when it was apparent that father's mental health treatment was inadequate, the lack of communication with father's psychiatrist, the absence of evaluations by mental health professionals in the record, and the fact that the social worker's primary source of information about father's mental heath status and treatment appears to have come from father's own relatives, including his aunt.

We conclude father was not provided with reasonable reunification services tailored to address his mental health issues. While services need not be perfect, there must at least be an attempt to provide more appropriate services when existing services prove inadequate to address a parent's unique needs.

3. *Modification to Terminate Services*

We reach our conclusion in this case with great hesitation because we largely agree with the juvenile court's assessment and tend to agree that it is not in the minor's best interest to continue reunification services. At the time the juvenile court terminated reunification services for father, it observed: "The problem is [that father] has a mental health problem that goes beyond, apparently, treatment at this point. At least they haven't been able to effectively treat him. . . . But the problem is that I don't know that any other followup could have helped. [¶] My observations of [father] are that he's very mentally ill, and he's being treated by a licensed physician who is a specialist in psychiatry, and even with the medications they're giving him, it hasn't been able to make him effectively deal with this child."

If the court was attempting, as it appears, to deny father further reunification services based upon a mental disability, the court was required to comply with the requirements of the governing statute, section 361.5, subdivision (b)(2), which allows a court to deny reunification services when the court finds, by clear and convincing evidence, that the parent "is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services."[5] Such a determination must be based upon competent evidence from mental health professionals. (See § 361.5, subd. (c); Fam. Code, § 7827, subd. (c).)

Although the Department chose not to pursue a denial of services based on the father's mental disability at the outset of the dependency proceeding (see § 361.5, subd. (b)(2)), it is not precluded from doing so now. Section 388, subdivision (a)(1) allows a party to seek a modification of any juvenile court order, including a dispositional order providing reunification services to a parent.[6] (See *Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 878 ["any order" includes dispositional order].) Section 388 was legislatively crafted to allow the court to consider new information bearing on the reunification process. (*In re Marilyn H., supra,* 5 Cal.4th at p. 309.) In this case, it would allow the juvenile court to consider modifying its dispositional order in order to deny further reunification services in light of father's mental disability.

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[5]Family Code section 7827, subdivision (a) defines a "mentally disabled" parent as one suffering "a mental incapacity or disorder that renders the parent . . . unable to care for and control the child adequately." A finding of mental disability must be supported by the expert opinion of two mental health experts who meet the qualifications set forth in Family Code section 7827, subdivision (c).

[6]Section 388, subdivision (c)(1)(A) expressly allows any party to seek a termination of further reunification services based on new evidence that would support a condition specified in section 361.5, subdivision (b), including evidence of a mental disability rendering the parent incapable of utilizing services. Section 388, subdivision (c)(1)(A) by its express terms applies to the period before the six-month review hearing in a case in which the minor was under three years of age when initially removed from the parents' custody. Because the six-month review has already passed in this case, subdivision (c) of section 388 and the specific requirements of that subdivision are inapplicable.

We are not suggesting that the juvenile court, based on this record, could have denied father further services and set the 366.26 hearing pursuant to section 361.5, subdivision (b)(2). The court was clearly conducting a six-month review hearing pursuant to section 366.21, subdivision (e). Further, the record before this court lacks the requisite evidence from mental health professionals supporting a finding that would justify denial of further services. Rather, we are offering an alternative procedure in an instance such as this one where the evidence raises serious doubt as to the parent's mental capacity to benefit from further reunification services. In lieu of providing further reunification services to father, the Department may wish to consider pursuing a motion under section 388 to deny further reunification services to father based upon clear and convincing evidence that he is incapable of utilizing services as a result of a mental disability.

4. *Improperly Sealed Records*

As a final matter, we note that the appellate record includes volumes designated as "confidential" by the juvenile court. Indeed, nearly half of the appellate record is designated as "confidential," although it is far from clear what level of confidentiality applies to the documents, who may have access to the documents, and whether the contents of the documents may be cited and referred to in publicly filed briefs and opinions. Confidentiality in juvenile proceedings is already afforded under section 827, which limits who has access to juvenile court records.

This court has recently become aware of a local practice in Solano County in which the court and counsel have agreed to maintain certain sensitive documents under seal from disclosure to the parties. Such purportedly sensitive documents include medical and psychological reports, drug testing records, police reports, and graphic photos of child abuse. In a pending juvenile dependency appeal out of Solano County, *In re K.P.* (A139689), the parent's appellate counsel objected to the sealing of documents by the juvenile court in Solano County. We ultimately agreed with counsel's concerns and issued an order in that case treating the entire record on appeal as confidential under section 827, with the parties afforded access to the record as specified in that statute and

the rules implementing it. In other words, we found no basis in that case for prohibiting the parties from having access to certain documents.

Although father's counsel in this case did not object to the designation of large numbers of documents as confidential, the designation remains problematic. The "confidential" volume of records in this case includes many documents, such as status reports and jurisdiction/disposition reports, that do not qualify as sensitive psychological or medical reports, even assuming it is appropriate to place such documents under seal. It is somewhat ironic that in this case, in which the record is practically devoid of actual evaluations by medical or psychological professionals, the court has chosen to seal large portions of the record. The designation of large numbers of documents as "confidential" hinders the ability to present the appeal, creates confusion as to whether the documents may be described or summarized in publicly filed documents, and generates uncertainty as to whether and to what extent the documents and their contents may be shared with counsel's client both during and after the appeal, including in cases in which appointed counsel files a no-issues statement and gives the client the opportunity to file a supplemental brief pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835. Further, as a practical matter, it is unclear how the clerks at the Court of Appeal are to maintain the records. If there is a basis for sealing the documents, any sealing order must clearly indicate who has access to the records and whether they may be cited or referred to in publicly filed documents.

A party to a juvenile court proceeding, including a parent or guardian, generally has the right to inspect and copy the juvenile case file without the need for an order authorizing disclosure of the file to the party.[7] (See § 827, subd. (a)(1)(D) ["minor's

[7] In *In re Gina S.* (2005) 133 Cal.App.4th 1074, 1083, the court concluded that a party's right to *inspect* documents in a juvenile court file did not necessarily permit the party to *copy* the documents. The court noted that the rule of court governing the matter, former rule 1423 of the California Rules of Court, allowed a party to copy documents only if the party secured a court order. (*In re Gina S., supra,* at p. 1084; see former Cal. Rules of Court, rule 1423(b), as amended Jan. 1, 2004.) The current governing rule, rule 5.552(b)(1) of the California Rules of Court, plainly allows a parent or guardian to

parents or guardian" may inspect juvenile case file] & (e) [defining "juvenile case file"]; Cal. Rules of Court, rules 5.534(k)(2) & (3) [child, parent, guardian, and their attorneys have right to receive social worker reports and all documents filed with the court], 5.552(a)(1) [defining "juvenile case file" to include "[a]ll documents filed in a juvenile court case"], 5.552(b)(1)(D) & (E) [permitting the child's parents or guardians to "inspect, receive, and copy the juvenile case file without an order of the juvenile court"], 8.401(b)(1) [record on appeal in juvenile matters may be inspected by "the parties or their attorneys" unless an exception applies].)

If federal or state law prohibits or limits the release of all or a portion of a juvenile court file, the requirements of that federal or state law prevail over the provisions of section 827 of the Welfare and Institutions Code.[8] (§ 827, subd. (a)(3)(A).) Also, if juvenile court records are sealed or maintained in confidence under authority other than Welfare and Institutions Code section 827, then sealing is governed by rules 8.45–8.47 of the California Rules of Court. (Cal. Rules of Court, rule 8.401(b)(3).)

In this case, there is no basis in the record for a sealing order that would prohibit disclosure of the purportedly "confidential" records to the parties, bearing in mind the presumption that parties have the right to inspect juvenile court records without the need for a court order. While federal and state law generally supports the notion that medical, mental health, and drug testing records are to be maintained in confidence, we are not aware of any statutory basis for prohibiting disclosure of such records to the parties in a juvenile dependency proceeding.[9] Insofar as the Department may claim there is a

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inspect, receive, and copy all documents filed in a juvenile court case without a prior court order.

[8]State law requires the Department and the juvenile court to maintain the identity and location of the foster family home in confidence unless the court orders otherwise. (§ 308, subd. (a).) This statute prevails over the provisions of section 827 of the Welfare and Institutions Code, which would otherwise afford a parent access to such information.

[9]In the pending case in which appellate counsel objected to the improper sealing of records, A139689, the Department purported to justify its claim of confidentiality by citing the entirety of the federal Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191 (Aug. 21, 1996) 110 Stat. 1936) (HIPAA). As we stated in

concern that parties may improperly disseminate or republish medical records, psychological reports, police reports, and other sensitive records, it is up to the Department to make an individualized showing demonstrating that sealing is necessary to prevent republication in this case. A local practice that prohibits disclosure of designated records to the parties in all juvenile dependency cases, without a statutory basis for the prohibition and without regard to the facts of the case, violates rules of court that afford parties access to all filings in juvenile court cases without the need for a court order. (See Cal. Rules of Court, rules 5.534(k)(2) & (3), 5.552(b)(1)(D) & (E).)

As a general matter, a concern about improper disclosures of confidential medical and mental health records may be addressed through nondissemination orders directed to the parties. (See *In re Tiffany G.* (1994) 29 Cal.App.4th 443, 447–448, 450–451 [court acted within its discretion in prohibiting dissemination of juvenile court documents, including psychological evaluations].) In appropriate cases, a party may seek to prohibit disclosure of certain records to the parties, but it is that party's burden to demonstrate the individualized need or the statutory or other legal basis for such an order.

Finally, the court notes that even if there were an agreement or stipulation by counsel to place certain documents under seal, such an agreement cannot serve as the sole basis for sealing records in the Court of Appeal. (Cal. Rules of Court, rule 8.46(d)(1).) Absent (1) a statutory basis for treating the records as confidential or (2) facts to support findings under rule 2.550(d)–(e) of the California Rules of Court, a sealing order is inappropriate.

By separate order, we will direct the clerk of this court to disregard the "confidential" designation on certain volumes in the record and to treat the entire record on appeal in both A138957 and A140063 as confidential under section 827, with the

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our order rejecting the Department's claim, if a party believes that HIPAA or some other statutory scheme provides a basis for prohibiting parties from receiving certain documents in a juvenile dependency proceeding, it is that party's obligation to specify the statute supporting its claim.

parties afforded access to the record as specified in that statute and the rules implementing it.

DISPOSITION

Let an extraordinary writ issue directing respondent court to vacate its orders terminating reunification services for father and scheduling a section 366.26 hearing. The juvenile court is further directed to conduct a new review hearing at which it must offer an additional six months of reunification services to father, unless new or different evidence supplies a proper legal basis for denying further services. Before the date of the new hearing, the department may want to consider filing a section 388 petition requesting that the court modify its dispositional orders in order to deny father further reunification services pursuant to section 361.5, subdivision (b)(2). In the event the Department files such a section 388 petition, and if the court finds father suffers from a mental disability that renders him incapable of benefiting from further services, the court may enter new orders denying petitioner further reunification services and setting a section 366.26 hearing.

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McGuiness, P.J.

We concur:

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Siggins, J.

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Jenkins, J.